

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW EVANS,

Defendant.

ORDER

07-cr-159-bbc
20-cv-839-bbc

In an order entered on September 22, 2020, I denied defendant Matthew Evans's motion for post conviction relief under 28 U.S.C. § 2255. In doing so, I neglected to address the issuance of a certificate of appealability under Rule 11 of the Rules Governing Section 2255 Cases in the United States District Courts. Defendant has now filed a request for a certificate of appealability of the September 22, 2020 order.

A certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make this showing, a defendant must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)).

Although Rule 11 allows the court to direct the parties to submit arguments on the question of issuing a certificate of appealability, it is unnecessary to do so in this instance. No reasonable jurist would believe that defendant's motion was timely.

ORDER

IT IS ORDERED that no certificate of appealability will issue in this case.

Entered this 30th day of October, 2020.

BY THE COURT:

/s/

BARBARA B. CRABB.
District Judge